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July 18, 2022

VIA ELECTRONIC MAIL & CON PORTAL

Kimberly R. Martone
Acting Executive Director
Office of Health Strategy
Health Systems Planning Unit
450 Capitol Avenue, MS #51OHS
P.O. Box 340308
Hartford, CT 06134-0308

**Re: Certificate of Need Application: Docket No. 20-32411-CON
Acquisition of 51% of Southwest Connecticut Surgery Center, LLC by
Hartford HealthCare Surgery Center Holdings, LLC
Letter of Inquiry**

Dear Director Martone:

This office represents Hartford HealthCare Corporation (“HHC”) and its affiliate Hartford HealthCare Surgery Center Holdings, LLC (“HHC Surgery”) (collectively the “HHC Entities”) in connection with the above-referenced inquiry regarding ownership and control of Southwest Connecticut Surgery Center, LLC (“SCSC”). Please accept the following in response to your letter of June 27, 2022, regarding assertions by Wilton Surgery Center (“WSC”) that the HHC Entities have assumed control of SCSC in violation of the Certificate of Need (“CON”) statutes. The HHC Entities have not engaged in any activity related to the ownership and control of SCSC that required CON approval.

As you note in your letter, SCSC and HHC Surgery (collectively the “Applicants”) filed a CON application for a change of ownership of SCSC on November 19, 2020, nearly 20 months ago. The CON application was deemed complete on February 17, 2021, after which WSC requested that a public hearing be held. OHS has scheduled a public hearing on this matter

for August 4, 2022.¹

In the 17 months that the Applicants have been awaiting a public hearing on this matter, SCSC became licensed by the Department of Public Health (“DPH”) at its new location in Wilton (*see Exhibit A* attached). SCSC reopened to the public for surgeries on October 8, 2021. On September 24, 2021, HHC Surgery obtained a non-controlling 51% equity interest in SCSC. A chart reflecting the current ownership structure of SCSC is attached as *Exhibit B*. DPH was notified of, and approved, this beneficial change of ownership (*see Exhibit C* attached). This transaction did not result in a “transfer of ownership” of a healthcare facility requiring CON approval under Connecticut General Statutes Section 19a-638(a)(2). A transfer of ownership of a healthcare facility is defined in Section 19a-630(15) as a transfer that ***impacts or changes the governance or controlling body of a health care facility***. HHC Surgery’s equity buy-in did not impact or change governance control of SCSC.

Prior to the equity buy-in by HHC Surgery, SCSC was exclusively governed by managers appointed by its sole member, SCSC Holdings, LLC (“SCSC Holdings”). After the equity buy-in, SCSC continues to be governed by a Management Committee (the “controlling body” for purposes of Section 19a-630) with full, exclusive, and complete discretion, power, and authority to manage, control, administer, and operate the business and affairs of the company. SCSC Holdings holds a majority of the seats on the Management Committee and thus has maintained governance control of SCSC notwithstanding HHC Surgery’s equity buy-in. The Applicants are now asking OHS for permission to change governance control of SCSC, which will not occur unless and until the CON application in this matter is approved.

As noted above, the transfer of economic interests only to HHC Surgery did not require CON approval because it did not result in a change in control of a healthcare facility. OHS and its predecessor, the Office of Health Care Access (“OHCA”), have consistently found that changes of ownership require CON approval when the governing body of the healthcare facility is impacted – primarily when the number of Board seats held by any given entity changes such that the entity assumes control of the Board. As noted above, governance control of SCSC remains with SCSC Holdings after HHC Surgery’s equity buy-in.

OHS addressed the issue of equity-only buy-ins in Docket No. 18-32277-DTR, involving Surgical Center of Connecticut (“SCC”). Therein, OHS concluded that a majority equity buy-in that did not result in a change in control of the facility’s Board of Managers was not a change in

¹ OHS’s letter identifies the date of the hearing as August 2, 2022, however the hearing has since been noticed for August 4, 2022. In addition, OHS’s letter incorrectly references the subsection of Connecticut General Statutes Section 19a-638(a) regarding transfer of ownership of a large group practice. This proposal is for the transfer of ownership of a healthcare facility – a DPH-licensed Outpatient Surgical Facility.

the governance or controlling body of a healthcare facility requiring CON review.²

To answer OHS's questions regarding billing, SCSC bills for the technical/facility component of procedures performed at the Center. Surgeons bill for their own professional fees. Nothing has changed in this regard with the HHC Surgery equity buy-in. SCSC is not a hospital outpatient department and services are not billed as hospital services. Hospital facility fees are not charged. Constitution Billing and Financial Services, LLC, an affiliate of Constitution Surgery Alliance, LLC ("CSA"), processes billing for SCSC.

On May 18, 2022, OHS received a letter from counsel for WSC requesting that the agency investigate the HHC Entity's involvement with SCSC. WSC set forth specific information and claimed that this information suggests the HHC Entities have assumed control of SCSC. WSC's claims, none of which establish that a change in governance control has occurred, are addressed below:

- Use of HHC branding on the SCSC website – Use of the HHC logo on the SCSC website does not establish that a change in governance control has taken place at the facility. As discussed above, HHC is a non-controlling equity owner of SCSC. Practically speaking, SCSC could license and use the brand of any of the physician owner groups and this would not necessitate CON approval for a transfer of governance control.
- Allowing an HHC Entity and/or HHC-affiliated physicians to obtain an equity ownership interest in SCSC – As discussed above, HHC Surgery's acquisition of a non-controlling equity interest in SCSC does not constitute a "transfer of ownership" under the CON statutes because there was no change to the governance control of SCSC as a result of the

² In a recent matter involving HHC Surgery and Surgery Center of Fairfield County, LLC ("SCFC"), OHS issued a CON Determination (Docket No. 21-32423-DTR) concluding that a CON was required for HHC Surgery to acquire a majority of the equity of SCFC's parent entity, SCA Connecticut Partners, LLC ("SCA-CT"). OHS erroneously assumed that the transfer of a majority equity interest in SCA-CT to HHC Surgery would give HHC Surgery "control" over SCA-CT and, in turn, control over SCFC. However, the acquisition of equity, in and of itself, had no impact on the governance control of SCA-CT or SCFC. The governance of each of these entities is controlled exclusively by an operating agreement that vests authority over the company's operations with a Board of Managers. The agreements executed in connection with the equity-only buy-in completed by HHC Surgery in the SCFC matter ensured that (i) an SCA entity retained governance control of SCA-CT, and (ii) an SCA entity retained the right to appoint and remove all three of SCA-CT's members of the SCFC Board of Managers. An SCA entity therefore retained governance control of SCFC notwithstanding HHC Surgery's purchase of a majority equity interests in SCA-CT. Both the equity buy-ins to SCFC and SCSC, with their lack of impact on governance control, are largely consistent with the SCC transaction for which OHS determined that CON approval was not required.

Notably, since the SCFC CON Determination was issued OHS has issued four separate CON Determinations confirming that parent-level transactions that do not change governance control at the facility level do not require CON approval (see Docket No. 22-32549-DTR (Column Health), Docket No. 21-32483-DTR (Greenwich Anxiety Institute), Docket No. 21-32463-DTR (Walden Behavioral Health), and Docket No. 21-32462-DTR (WBC Connecticut East)).

acquisition. Similarly, nothing in the CON statutes precludes HHC-affiliated physicians, or any physicians, from acquiring non-controlling interests in SCSC or any other ambulatory surgical facility without CON approval. Indeed, physicians purchase interests in ambulatory surgical facilities on a regular basis without OHS approval, and we presume that would also include the physicians who own interests in WSC. In addition, just because a physician who is affiliated with a health system owns or has privileges at an ambulatory surgical facility does not mean that the health system with which that physician is affiliated controls the facility. The purchase of ownership interests by HHC-affiliated physicians was part of the original ownership offering in SCSC and predates any equity buy in by HHC. Moreover, many physicians are affiliated with multiple health systems and providers, each of which would then assume control under WSC's logic, making this argument even more implausible.

- Implementing certain HHC policies and procedures – The policies and procedures to which WSC refers are SCSC policies. These policies are similar to those policies used at other HHC-CSA joint venture ambulatory surgical facilities. The fact that HHC, as an equity owner of SCSC, has assisted with the implementation of policies and procedures does not constitute a change in governance control of the facility.
- Advertising HHC's Health Center in Wilton and referencing HHC-affiliated surgeons who practice at the Health Center – The advertisement to which WSC refers is for HHC's Health Center in Wilton and not for SCSC. Thus, when HHC states that this location is the newest addition to its expanding services throughout Fairfield County, this refers to the Health Center itself, which houses, among other services, specialists offering urology and kidney services, breast cancer services and medical and surgical weight loss. In any event, most of the procedures performed at SCSC are performed by physicians in private practice.
- Using an SCSC logo with HHC branding to advertise for an available nursing position at the facility – The Indeed listing attached to WSC's letter shows SCSC, not HHC, advertising for a Pre-op/PACU Registered Nurse. As noted above, the use of HHC's logo as part of the SCSC logo does not result in a change in governance control to the facility.

We trust that these responses adequately address OHS's concerns. The HHC Entities purchased a non-controlling equity interest in SCSC with a good faith belief, based on OHS precedent and advice of counsel, that the acquisition does not constitute a "transfer of ownership" under the CON statutes because governance control of the facility has not changed. The Applicants maintained their pending CON application because OHS approval is required for the change in governance control that the Applicants seek. In further support of the HHC Entities' good faith position regarding "transfer of ownership" and in a transparent disclosure of

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the equity buy-in (and the pending related CON application), DPH was notified of and approved the equity buy-in. All of this is consistent with the Applicants' good faith understanding that the law allows the transfer of economic interests only without CON approval.

Please let us know if you have any questions or if additional information is required for your review.

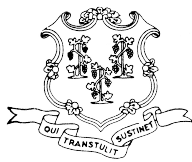
Very Truly Yours,



Jennifer Groves Fusco
Counsel for Hartford HealthCare
Corporation & Hartford HealthCare
Surgery Center Holdings, LLC

cc: Barbara Durdy
Lara Manzione, Esq.

EXHIBIT A



STATE OF CONNECTICUT
Department of Public Health

In accordance with the provisions of the General Statutes of Connecticut Section 19a-493 the following license to maintain and operate a

Out-Patient Surgical Facility

LICENSE NO:

373

has been granted to

SOUTHWEST CONNECTICUT SURGERY CENTER, LLC

d/b/a

SOUTHWEST CONNECTICUT SURGERY CENTER, LLC

Located at

60 DANBURY RD
WILTON, CT 06897-4406

For the period from 08/04/2021 to 06/30/2023 .



Deidre S. Gifford, MD, MPH
Acting Commissioner

Appendix A: Regulations Waived

STATE OF CONNECTICUT
Department of Public Health
LICENSE APPENDIX A: REGULATIONS WAIVED

Out-Patient Surgical Facility

LICENSE NO:
373

SOUTHWEST CONNECTICUT SURGERY CENTER, LLC

For the period from 08/04/2021 to 06/30/2023.

No Regulations Waived

EXHIBIT B

Structure of SCSC, LLC

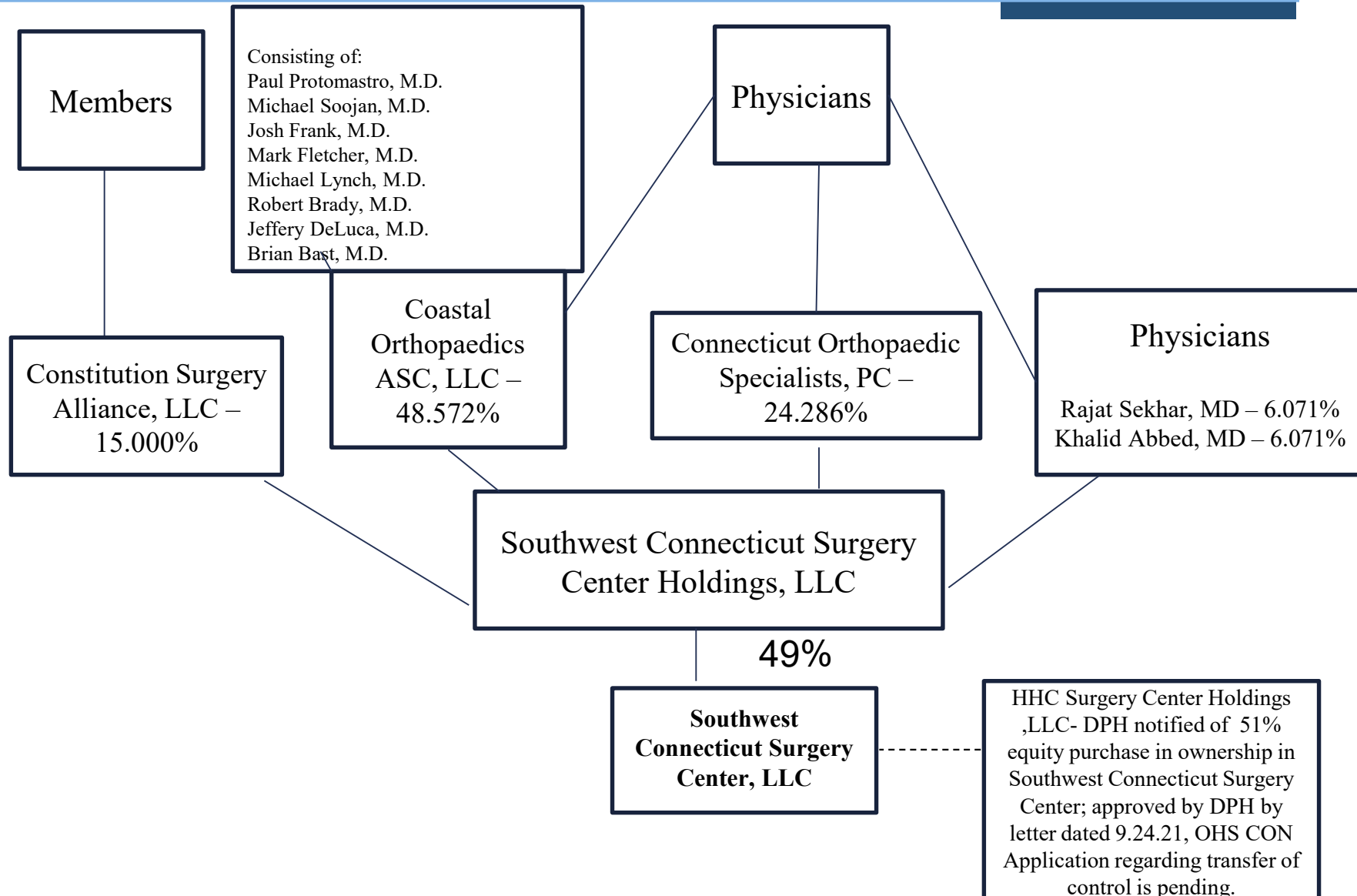


EXHIBIT C

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

Deidre S. Gifford, MD, MPH
Acting Commissioner



Ned Lamont
Governor
Susan Bysiewicz
Lt. Governor

Date: September 24, 2021

To: Southwest Connecticut Surgery Center, LLC

RE: Beneficial Change of Ownership
Southwest Connecticut Surgery Center, LLC (ASC No. 373)
60 Danbury Road
Wilton, CT 06897-4406

The Connecticut Department of Public Health's Facility Licensing & Investigations Section (FLIS) has received and accepted the required application materials for the Beneficial Change of Ownership of the abovementioned facility. These documents indicate that the facility will continue to operate as an **ambulatory/out-patient surgical** facility. Also, the documents specify that the DBA name, licensee/operating entity, physical address, state tax ID number, federal employee ID number, National Provider Identifier number and Medicare provider number will remain the same.

Based on the above information, the Beneficial Change of Ownership of the facility is approved by this Department in accordance with Section 19a-493 of the General Statutes of Connecticut.

It is expected that the change of ownership transaction will occur on or about **September 24, 2021**. The effective date of the change in the licensure file will be the date of the legal change of ownership. The Department is to be notified immediately via email of the actual date of transaction. Furthermore, the closing documents are to be received by the Department within two weeks of the legal change of ownership.

Please note, no new license will be issued.

If you have any questions, please do not hesitate to contact this office.

Sincerely,
Matthew Lenczewski, Health Program Associate
Facility Licensing and Investigations Section

cc: Updike, Kelly & Spellacy, P.C.



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